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Appellants:	Thomas H. Roessler et al.	Docket No.:	14,541
Serial No.:	09/216,545	Group:	3761
Confirmation No:	9533	Examiner:	Karin M. Reichle
Filed:	December 18, 1998	Date:	June 26, 2006
For:	PANT-LIKE DISPOSABLE ABSORBENT ARTICLES WITH AN EASY OPENING FEATURE		

**Corrected Brief on Appeal to the Board of Patent Appeals and Interferences**

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Sir:

This Appeal Brief-Corrected is filed in response to the Notification of Non-Compliant Appeal (37 CFR 41.37(c)) to the Final Rejection having a mailing date of May 24, 2006, for the above-identified application. This Corrected Brief on Appeal is timely as June 24, 2006 falls on a Saturday, and it is being filed on the next succeeding day which is not a Saturday, Sunday or a Federal holiday pursuant to 37 C.F.R. § 1.7. A Notice of Appeal was filed December 19, 2005.

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**Real Party in Interest**

The real party in interest is Kimberly-Clark Worldwide, Inc., the assignee of all rights to the invention of the above-identified application.

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**Related Appeals and Interferences**

To the knowledge of appellant, appellant's legal representative, or assignee, there are no other known related appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

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**Status of the Claims**

Claims 40-49 are currently pending in the application. A copy of the appealed claims appears in the Claims Appendix of this Brief. Claims 1-39 and 50-52 have been cancelled.

Claims 40-49 stand rejected under 35 U.S.C. 103. The rejection of claims 40-49 under 35 U.S.C. §103 is being appealed.

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**Status of Amendments**

No amendments were filed subsequent to the Final Rejection.

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**Summary of Claimed Subject Matter**

The following summary correlates claim elements to specific embodiments described in the application specification, but does not in any manner limit claim interpretation. Rather, the following summary is provided only to facilitate the Board's understanding of the subject matter of this appeal.

The invention of independent Claim 40 provides a distinctive pant-like, prefasted, refastenable, disposable absorbent article 20. The disposable absorbent article 20 defines a front waist region 22, a back waist region 24, a crotch region 26 which extends between and connects said waist regions 22, 24, a longitudinal direction 38 and a lateral direction 40 (see Fig. 1 and specification at page 6, lines 28-30). The absorbent article 20 includes an absorbent chassis 28 which defines an exterior surface 36, an interior surface 34 opposite said exterior surface 36, a pair of laterally opposed side edges 30 and a pair of longitudinally opposed waist edges 32 (see Fig. 1 and specification at page 6, lines 32-35). The absorbent article 20 also includes a pair of opposed elastic back panels 72 which are respectively permanently attached to said side edges 30 of said absorbent chassis 28 in said back waist region 24 of said absorbent article 20, said back panels 48 extending laterally outward from said side edges 30 (see Fig. 3 and specification at page 14, lines 17-22). The absorbent article 20 also includes a pair of opposed elastic front panels 70 which are respectively refastenably attached to said side edges 30 of said absorbent chassis 28 in said front waist region 22 of said absorbent article 20 to provide a refastenable joint 78 (see Fig. 3 and specification at page 13, line 29 – page 14, line 7). Said front panel 70 and said back panel 72 on each side edge 30 of said absorbent chassis 28 are permanently connected together along a side seam 74 to define a waist opening and a pair of leg openings and provide said pant-like, prefasted, refastenable, disposable absorbent article 20, said front panels 70 extending laterally outward from said side edges (see Figs. 1, 2 and 3, specification at page 7, lines 8-18 and page 14, lines 18-25). The absorbent article 20 includes a fastener 62 located on each of said front panels 70 which is releasably engaged with said exterior surface 36 of said absorbent chassis 27 in said front waist region 22 to provide said refastenable joint 78 (see Figs. 1, 2 and 3, and specification at page 7, lines 20-28). The absorbent article 20 also includes a releasable bond 64 located on each of said front panels 70 which releasably bonds each front panel 70 to said respective side edge 30 of said absorbent chassis 28 in said front waist region 22 to assist in maintaining said pant-like, prefasted, refastenable, disposable absorbent article 20 in said prefasted condition (see Fig. 1 and specification at page 18, lines 12-35).

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The invention of Independent Claim 49 provides a distinctive pant-like, prefastened, refastenable, disposable absorbent article 20 (see Fig. 1 and specification at page 6, lines 28-30). The disposable absorbent article 20 defines a front waist region 22, a back waist region 24, a crotch region 26 which extends between and connects said waist regions 22, 24, an absorbent chassis 28 which defines a pair of opposed side edges 30 and a pair of opposed waist edges 32 (see Fig. 1 and specification at page 6, lines 32-35). The pant-like, disposable absorbent article 20 is made by a process which includes providing a continuous web of interconnected absorbent chassis 80 (see Fig. 4 and specification at page 21, lines 9-18). The process also includes permanently attaching a pair of laterally opposed elastic back panels 72 to said side edges 30 of said absorbent chassis 28 in said back waist region 24 to provide a permanent joint 76, said back panels 72 extending laterally outward from said side edges 30 (see Figs. 3, 4, specification at page 13, line 29 – page 14, line 7 and page 23, lines 15-23). The process also includes refastenably attaching a pair of laterally opposed elastic front panels 70 to said side edges 30 of said absorbent chassis 28 in said front waist region 22 of said absorbent article 20 to provide a refastenable joint 78, where refastenably attaching includes ultrasonically bonding said front panels 70 to said side edges 30 of said absorbent chassis 28 in said front waist region 22, said front panels 70 extending laterally outward from said side edges 30 (see Fig. 3, specification at page 14, lines 17-27 and page 23, line 25 – page 23, line 16). The process includes selectively cutting said continuous web of interconnected absorbent chassis 80 into discrete absorbent articles 20 (see Fig. 4 and specification at page 24 lines 18-26). The process also includes folding each of said discrete absorbent articles 20 about a fold line extending in a lateral direction through said crotch region 26 of said article 20 thereby positioning said front panels 70 and said back panels 72 in a facing relationship (see Figs. 2-4 and specification at page 24, lines 28-35). Further, the process includes permanently connecting said front panel 70 and said back panel 72 on each side edge 30 of the absorbent chassis 28 together along a pair of laterally opposed side seams 74 to define a waist opening and a pair of leg openings and provide said pant-like, prefastened, refastenable, disposable absorbent article 20 (see Figs. 1-3, specification at page 7, lines 8-18, page 14, lines 18-25 and page 25, lines 8-20).

The present invention advantageously provides pant-like, refastenable disposable absorbent articles which include an easy opening feature and methods of making the same. In particular, the present invention provides pant-like disposable absorbent articles which are capable of being reliably pulled up or down over the hips of the wearer to assist in the toilet training of the wearer similar to conventional training pants. Moreover, similar to conventional diapers, the pant-like disposable absorbent articles of the present invention can advantageously be applied to and removed from the wearer similar to

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conventional diapers after they have been soiled with relative ease and cleanliness. Further, the pant-like disposable absorbent articles of the present invention allow easy inspection by the care giver to assist in determining whether the article is soiled similar to conventional diapers (see page 4, line 32 – page 5, line 7).

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### **Grounds of Rejection to be Reviewed on Appeal**

#### **Ground 1**

Claims 40 – 47 and 49 stand rejected under 35 U.S.C. § 103(a) over the following prior art: [1] U.K. Patent Application 2 308 290 issued to Fernfors and assigned to SCA Mölnlycke AB (hereinafter "the SCA Publication") and [2] PCT Patent Application WO 95/27463 issued to Larsson (hereinafter "the Larsson Publication").

#### **Ground 2**

Claim 48 stands rejected under 35 U.S.C. 103(a) over the following prior art: [1] the SCA Publication and [2] the Larsson Publication, and further in view of [3] U.S. Patent No. 5,685,873 to Bruemmer (hereinafter "the Bruemmer Patent").

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### **Argument**

#### **The claims on appeal**

Claims 40-49 are on appeal, and are set forth in the enclosed CLAIMS APPENDIX.

#### **Prior art relied on by the Examiner**

In the Final Rejection, the Examiner has relied on the following art:

U.K. Patent Application 2 308 290 issued to Fernfors and assigned to SCA Mölnlycke AB  
PCT Patent Application WO 95/27463 issued to Larsson  
U.S. Patent No. 5,685,873 to Bruemmer

#### **Discussion**

For the reasons set forth below, Appellants respectfully submit that the Examiner's rejection should be reversed. It is also respectfully submitted that the claims stand or fall together.

It is respectfully submitted that the Examiner's rejections under 35 U.S.C. §103, based on the teachings of the cited references are not proper, and that the teachings of the cited references do not render obvious a structure having the combination of components called for by Appellants' claimed invention. Further, it is respectfully submitted that the Examiner has not established "*prima facie*" that a proper

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combination of the cited references would disclose or suggest Appellants' claimed invention.

In order to establish a *prima facie* case of obviousness, three basic criteria must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §2143.

When asserting a case of obviousness, it is not appropriate to engage in hindsight. Therefore, one may not pick and choose isolated elements from various prior art references and combine them so as to yield the invention in question when such combining would not have been an obvious thing to do at the time in question. Panduit Corporation v. Dennison Manufacturing Company, 227 USPQ 337 (Fed. Cir. 1985). Crown Operation International, Ltd. V. Solutia Inc., 289 F.3d 1367, 1376, 62 USPQ2d 1917 (Fed. Cir. 2002).

The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. In re Gordon, 733 F.2d at 902, 221 USPQ at 1127. In re Fritch, 23 USPQ 2d 1780, 1783-1784 (Fed. Cir. 1992).

It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. In re Fritch, 23 USPQ 2d 1780 at 1784 (Fed. Cir. 1992); and In re Gorman, 933 Fed. 2nd 982, 987, 18 USPQ 2d 1885, 1888 (Fed. Cir. 1991). One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. In re Fine, 837 Fed. 2d at 1075, 5 USPQ 2d at 1600. In re Fritch, 23 USPQ 2d 1780 at 1784 (Fed. Cir. 1992). Where the cited references do not teach how to make the particular combinations needed to arrive at the invention called for by Appellants' claims, the claimed invention cannot be deemed "obvious". Ex parte Levensgood, 1993.

It is also well established that a prior art reference must be evaluated in its entirety and that the prior art must be evaluated as a whole. W.L. Gore and Associates, Inc. v. Garlock, Inc., 220 USPQ 303 (Fed. Cir. 1983). Where neither any reference considered in its entirety, nor the prior art as a whole, suggests the combination claimed, the invention is non-obvious. Fromson v. Advance Offset Plate, Inc., 225 USPQ 26 (Fed. Cir. 1985).

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### Ground 1

It is respectfully submitted that claims 40-47 and 49 are patentable over U.K. Patent Application 2 308 290 issued to Fernfors and assigned to SCA Mölnlycke AB in view of PCT Patent Application WO 95/27463 issued to Larsson. Specifically, the SCA Publication clearly does not disclose a pant-like, prefastened, refastenable disposable absorbent article of the present invention that includes elastic front and back panels that extend laterally outward from said side edges, and the Larsson Publication fails to correct the deficiencies of the SCA Publication. Accordingly, the Examiner's rejection under 35 U.S.C. § 103(a) should be reversed.

The Examiner acknowledges that the SCA Publication does not teach the releasable bond as set forth in subsection (e) of claim 40, and the specifics thereof in the dependent claim 46. The Examiner believes the Larsson Publication teaches an article which includes a releasable bond in addition to a refastenable joint to improve reliability of maintaining the article in a prefastened condition. The Examiner believes "[t]o employ a releasable bond as taught by Larsson on the SCA device would be obvious to one of ordinary skill in the art in view of the recognition that such would improve the reliability of maintaining the prefastened condition during use and the desirability of such by SCA."

Independent Claim 40 is directed to *inter alia* a pant-like, prefastened, refastenable, disposable absorbent article. The absorbent article includes a pair of opposed elastic back panels which are respectively permanently attached to said side edges of said absorbent chassis in said back waist region of said absorbent article, the back panels extending laterally outward from the side edges. The absorbent article also includes a pair of opposed elastic front panels which are respectively refastenably attached to the side edges of the absorbent chassis in the front waist region of the absorbent article to provide a refastenable joint. Further, the front panel and the back panel on each side edge of the absorbent chassis are permanently connected together along a side seam to define a waist opening and a pair of leg openings and provide the pant-like, prefastened, refastenable, disposable absorbent article, the front panels extending laterally outward from the side edges. Claim 49 of the present invention is directed to *inter alia* a pant-like, prefastened, refastenable, disposable absorbent article. The pant-like, disposable absorbent article is made by a process which comprises:

- a) providing a continuous web of interconnected absorbent chassis;
- b) permanently attaching a pair of laterally opposed elastic back panels to said side edges of said absorbent chassis in said back waist region to provide a permanent joint, said back panels extending laterally outward from said side edges;
- c) refastenably attaching a pair of laterally opposed elastic front panels to said side edges of

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said absorbent chassis in said front waist region of said absorbent article to provide a refastenable joint, wherein refastenably attaching includes ultrasonically bonding said front panels to said side edges of said absorbent chassis in said front waist region, said front panels extending laterally outward from said side edges;

d) selectively cutting said continuous web of interconnected absorbent chassis into discrete absorbent articles;

e) folding each of said discrete absorbent articles about a fold line extending in a lateral direction through said crotch region of said article thereby positioning said front panels and said back panels in a facing relationship; and

f) permanently connecting said front panel and said back panel on each side edge of the absorbent chassis together along a pair of laterally opposed side seams to define a waist opening and a pair of leg openings and provide said pant-like, prefastened, refastenable, disposable absorbent article.

The SCA Publication describes a method of producing reclosable absorbent garments, and absorbent garments obtained by that method. In particular, the SCA Publication describes a single garment or a series of joined single garments that are produced in the closed state (see page 3, lines 3-5). The Examiner acknowledges that the SCA Publication does not teach the releasable bond as set forth in subsection (e) of claim 40, and the specifics thereof in the dependent claim 46. Moreover, Appellants assert the SCA Publication does not disclose the remaining features of the pant-like, prefastened, refastenable disposable absorbent article of the present invention. That is, the SCA Publication fails to disclose a pant-like, prefastened, refastenable disposable absorbent article that includes a pair of elastic opposed back panels that are permanently attached to the side edge of the absorbent chassis in the back waist region of the absorbent article, and extend laterally outward from the side edges. Instead, at page 11, lines 11-15, the SCA Publication states when elastic material are used:

For example, although it has been described that surplus material 9 is left over line 6 for strips 8 and 13, in order that said strips will not break when the separation of zone '(c)' is carried out, the strips could be arranged to be elastic in said region instead and be laid relatively flat over said line 6. However, such an embodiment is not preferred.  
(emphasis added)

As such, the SCA Publication clearly does not disclose a pant-like, prefastened, refastenable disposable absorbent article of the present invention that includes elastic front and back panels that extend laterally outward from said side edges. Instead, the SCA Publication teaches away from the

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claimed invention by stating that the strip (8) could be "elastic and be laid relatively flat over said line 6." (Page 11, lines 11-15). In this way, if the strip (8) is elastic and laid relatively flat over line 6, the strip (8) would not extend laterally outward from said side edges.

Moreover, the Larsson Publication fails to correct the deficiencies of the SCA Publication. That is, the Larsson Publication fails to teach or suggest the pant-like, prefasted, refastenable, disposable absorbent articles as recited in the rejected claims. In particular, the SCA Publication does not teach or suggest a pair of elastic front and back panels that extend laterally outward from said side edges and the Larsson Publication fails to correct this deficiency. In fact, the Larsson Publication, at page 6, lines 9-11 teaches away from the claimed invention by describing that, "the front side parts of the pants-type diaper are joined to respective opposing rear side parts 9 and 10 by means of a fastener band 11," rather than via side panels.

Therefore, for at least these reasons, Appellants assert that independent claims 40 and 49 are patentable under 35 U.S.C. § 103 over the SCA Publication in view of the Larsson Publication. Likewise, Appellants respectfully submit that claims 41 – 47, which depend from independent claim 40, are patentable over the SCA Publication in view of the Larsson Publication for at least the reasons stated above. Appellants respectfully request that the rejection of claims 40-47 and 49 under 35 U.S.C. § 103(a) be reversed.

## **Ground 2**

It is respectfully submitted that claim 48 is patentable over the SCA Publication in view of the Larsson Publication and U.S. Patent No. 5,685,873 issued November 11, 1997, to Bruemmer. Specifically, the SCA Publication alone or in combination with the Larsson publication fails to teach the claimed invention, and the Bruemmer Patent fails to correct for the deficiencies of these references. Accordingly, Appellants respectfully request that the rejection of claim 48 under 35 U.S.C. § 103(a) be reversed.

The Examiner acknowledges that the SCA Publication and the Larsson Publication do not disclose a releasable bond defining a peel strength of no more than 1500 grams. The Examiner believes that this is equivalent to the maximum force allowing opening or unfastening of the bond. The Examiner believes that the Bruemmer Patent teaches fasteners having a maximum unfastening force of no more than about 1500 grams so as to permit an adult to open such fastener but prevent a child from doing so. The Examiner believes, therefore, to employ a releasable bond defining a peel strength of no more than 1500 grams on the SCA Publication device would be obvious to one of ordinary skill in the art in



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view of the recognition that such would allow intended opening by adults and the desirability of such by the prior art.

The Bruemmer Patent is directed to a disposable absorbent garment including a pair of differentially stretchable ear members where each differentially stretchable ear member comprises a stretchable inner ear portion and a stretchable outer ear portion. A first fastening mechanism on each ear is releasably fastenable to the front of the article, and second fastenable members on the outermost portions of each stretchable ear are fastenable together at the front of the diaper when worn. In particular, at column 4, line 55 – column 5, line 4 the Bruemmer Patent teaches a snap fastener or other type of mechanical fastener, the primary purpose of which is to provide a childproof fastening system. Accordingly, the Bruemmer Patent teaches that the snap fastener should have a fastening force in the range of about 500 to about 1500 grams force.

The SCA Publication alone or in combination with the Larsson publication fails to teach the claimed invention. The Bruemmer Patent fails to correct for the deficiencies of these references. The SCA Publication, the Larsson publication and the Bruemmer patent alone or in combination fail to teach or suggest the pant-like, prefastened, refastenable, disposable absorbent articles as recited in the rejected claim. In particular, the Bruemmer Patent does not teach a pair of front and back panels that are permanently connected together along a side seam and extend laterally outward from the side edges. Therefore, since claim 40 is patentable over the cited references, it is axiomatic that claim 48 is also patentable under 35 U.S.C. § 103(a) over the SCA Publication, in view of the Larson Publication and the Bruemmer Patent. As a result, the Examiner has failed to make out a *prima facie* case of obviousness under 35 U.S.C. § 103(a). Consequently, claim 48 is patentable under 35 U.S.C. § 103(a). Appellants respectfully request that the rejection of claim 48 under 35 U.S.C. § 103(a) be reversed.

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**Conclusion**

For the reasons stated above it is Appellants' position that the Examiner's rejection of claims has been shown to be untenable and should be reversed by the Board.

Please charge the \$500.00 fee (fee code 1402), pursuant to 37 C.F.R. 41.20(b)(2), for filing this Appeal Brief to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. Any additional prosecutorial fees which are due may also be charged to deposit account number 11-0875.

The undersigned may be reached at: 920-721-4558

Respectfully submitted,  
THOMAS H. ROESSLER ET AL.

By:   
David J. Klann  
Registration No.: 46,833

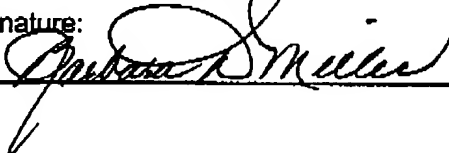
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**Appendix – The Claims On Appeal**

The claims on appeal are:

**Claim 40** A pant-like, prefastened, refastenable, disposable absorbent article which defines a front waist region, a back waist region, a crotch region which extends between and connects said waist regions, a longitudinal direction and a lateral direction, said absorbent article further comprising:

- a) an absorbent chassis which defines an exterior surface, an interior surface opposite said exterior surface, a pair of laterally opposed side edges and a pair of longitudinally opposed waist edges;
- b) a pair of opposed elastic back panels which are respectively permanently attached to said side edges of said absorbent chassis in said back waist region of said absorbent article, said back panels extending laterally outward from said side edges;
- c) a pair of opposed elastic front panels which are respectively refastenably attached to said side edges of said absorbent chassis in said front waist region of said absorbent article to provide a refastenable joint wherein said front panel and said back panel on each side edge of said absorbent chassis are permanently connected together along a side seam to define a waist opening and a pair of leg openings and provide said pant-like, prefastened, refastenable, disposable absorbent article, said front panels extending laterally outward from said side edges;
- d) a fastener located on each of said front panels which is releasably engaged with said exterior surface of said absorbent chassis in said front waist region to provide said refastenable joint; and
- e) a releasable bond located on each of said front panels which releasably bonds each front panel to said respective side edge of said absorbent chassis in said front waist region to assist in maintaining said pant-like, prefastened, refastenable, disposable absorbent article in said prefastened condition.

**Claim 41** The absorbent article of claim 40 wherein said absorbent chassis comprises:

- a) an outer cover;
- b) a bodyside liner which is connected to said outer cover in a superposed relation; and
- c) an absorbent core disposed between said outer cover and said bodyside liner.

**Claim 42** The absorbent article of claim 40 wherein said fasteners are hook fasteners.

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Claim 43 The absorbent article of claim 40 and further comprising at least one attachment panel which is located on said exterior surface of said absorbent chassis wherein said fasteners are refastenably engaged to said attachment panel.

Claim 44 The absorbent article of claim 41 wherein said fasteners are refastenably engaged directly to said outer cover of said absorbent chassis.

Claim 45 The absorbent article of claim 40 wherein each of said side seams defines a lateral outboard edge of said article.

Claim 46 The absorbent article of claim 40 wherein said releasable bonds include at least one point bond.

Claim 47 The absorbent article of claim 40 wherein said releasable bonds are ultrasonic bonds.

Claim 48 The absorbent article of claim 40 wherein said releasable bonds define a peel strength of no more than about 1500 grams.

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**Claim 49** A pant-like, prefastened, refastenable, disposable absorbent article which defines a front waist region, a back waist region, a crotch region which extends between and connects said waist regions, an absorbent chassis which defines a pair of opposed side edges and a pair of opposed waist edges, wherein said pant-like, disposable absorbent article is made by a process which comprises:

- a) providing a continuous web of interconnected absorbent chassis;
  - b) permanently attaching a pair of laterally opposed elastic back panels to said side edges of said absorbent chassis in said back waist region to provide a permanent joint, said back panels extending laterally outward from said side edges;
  - c) refastenably attaching a pair of laterally opposed elastic front panels to said side edges of said absorbent chassis in said front waist region of said absorbent article to provide a refastenable joint, wherein refastenably attaching includes ultrasonically bonding said front panels to said side edges of said absorbent chassis in said front waist region, said front panels extending laterally outward from said side edges;
  - d) selectively cutting said continuous web of interconnected absorbent chassis into discrete absorbent articles;
  - e) folding each of said discrete absorbent articles about a fold line extending in a lateral direction through said crotch region of said article thereby positioning said front panels and said back panels in a facing relationship; and
  - f) permanently connecting said front panel and said back panel on each side edge of the absorbent chassis together along a pair of laterally opposed side seams to define a waist opening and a pair of leg openings and provide said pant-like, prefastened, refastenable, disposable absorbent article.
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**Evidence Appendix**

Not Applicable

**Related Proceedings Appendix**

There are no known related proceedings.